

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

ALONZO HOYE

PETITIONER

VERSUS

CIVIL ACTION NO. 5:22-cv-63-DCB-ASH

MARCUS McCLURE

RESPONDENT

ORDER

BEFORE THE COURT are pro se Petitioner Alonzo Hoyer's Motions for Certificate of Appealability [16] [19] filed on April 22, 2024, and May 15, 2024, respectively, and Motion to Proceed *In Forma Pauperis* [20] filed on May 15, 2024. For the following reasons, Petitioner's Motions [16] [19] [20] are denied.

Petitioner filed the instant civil action under 28 U.S.C. § 2254 on July 26, 2022. Pet. [1] at 1. On August 24, 2022, this Court deemed this habeas civil action successive, and because Petitioner had failed to obtain authorization from the Fifth Circuit to file this successive petition, it was transferred to the United States Court of Appeals for the Fifth Circuit. Order [4] at 1-4. The Fifth Circuit dismissed Petitioner's request for authorization to file a successive habeas petition for failure to comply. *In re Hoyer*, No. 22-60473 (5th Cir. Oct. 17, 2022). The Fifth Circuit then dismissed Petitioner's appeal for want of prosecution. *Hoyer v. McClure*, No. 22-60480 (5th Cir. Jan. 4, 2023).

Petitioner, as previously noted, has filed Motions for Certificate of Appealability. Mot. [16] [19]. This case was transferred to the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. § 1631 on August 24, 2022. Order [4]. "[A] transfer order under 28 U.S.C. § 1631 is not a final order within the meaning of 28 U.S.C. § 2253(c)(1)(B), and the appeal of such an order does not require a COA." *United States v. Fulton*, 780 F.3d 683, 688

(5th Cir. 2015). Therefore, Petitioner's Motions for Certificate of Appealability [16] [19] are denied as unnecessary, and will be denied.

Petitioner filed a Notice of Appeal [6] on August 30, 2022, and it was dismissed by the Fifth Circuit on January 4, 2023, for want of prosecution. Judgment/Mandate [15] at 1.

Petitioner does not have an appeal pending in this case. Consequently, his request for a Motion to Proceed *In Forma Pauperis* [20] will be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that, for the reason stated above, pro se Petitioner Alonzo Hoye's Motions for Certificate of Appealability [16] [19] are denied.

IT IS FURTHER ORDERED AND ADJUDGED that Petitioner's Motion to Proceed *In Forma Pauperis* [20] is denied.

THIS, the 23rd day of May, 2024.

s/David Bramlette

UNITED STATES DISTRICT JUDGE